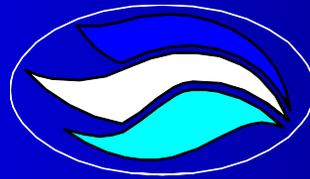


# Receiving Water Limitation Issues and Recommendations

Presented By:

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Cities of Carson, Compton, Gardena, Lawndale,  
Irwindale, Lomita, San Fernando,  
Pico Rivera, and West Covina

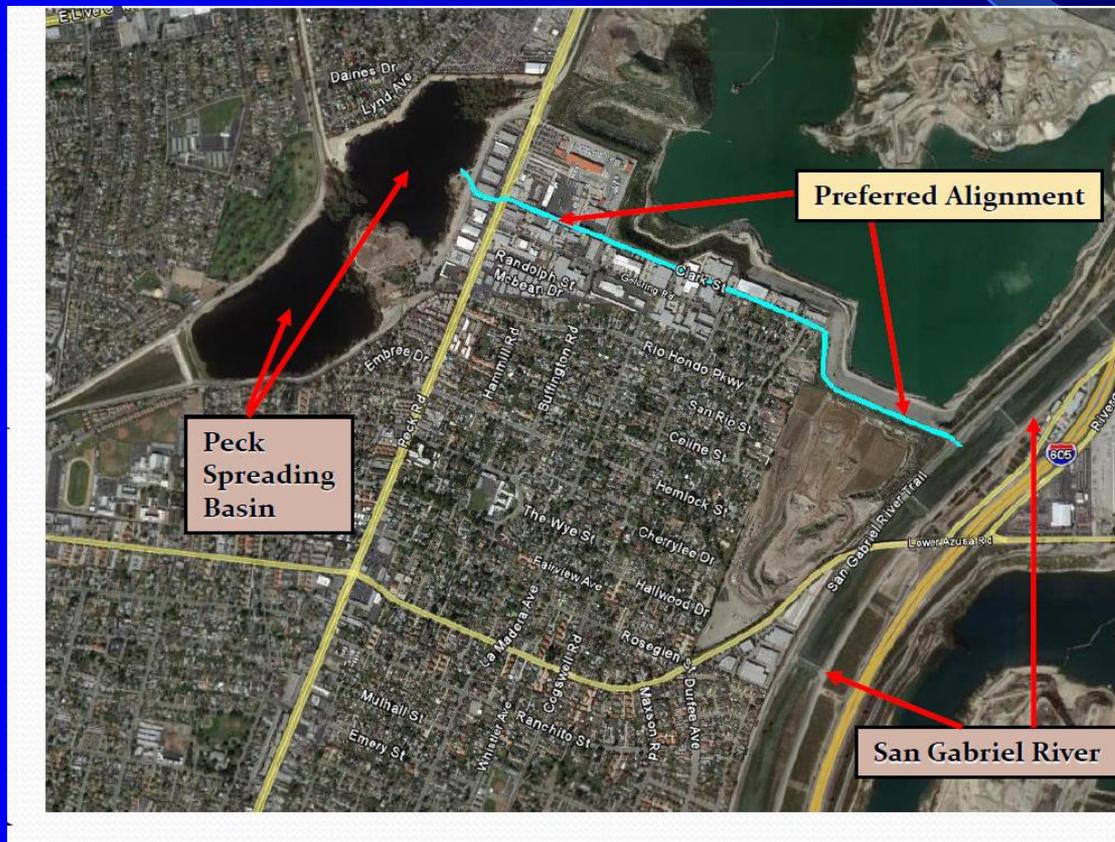


# RWL Language Revision

- Can the LA MS4 Permit's EWMP and WMP Be RWL Alternatives for Complying with Water Quality Standards?
  - EWMP/WMP cannot because:
    - Neither complies with WQO 99-05 which requires compliance with water quality standards through the timely and complete implementation of a stormwater management plan to the MEP; if WQS exceedances persistently occur (based on outfall monitoring against ambient standards) an iterative process would be triggered -- to modify BMPs to address the exceedances and incorporate them into stormwater management plan
    - The **EWMP** instead determines compliance by requiring participating permittees to construct macro-infiltration controls (likely to be outside an MS4) that have multi-benefits including increasing groundwater storage and minimizing the need for conventional storm drains. Not clear how infiltration controls will meet water quality standards in discharges from the MS4.
    - The **WMP** determines compliance by proposing in a plan to be submitted later that will address TMDLs through BMPs that will be based on reasonable assurance analysis (modeling). The implementation of the BMPs will place permittees in compliance with interim TMDL waste load allocations; but if the BMPs, based on monitoring do not meet final waste load allocations, the permittees will be in violation

# RWL Language Revision

## Peck Park Spreading Ground Regional Multi-benefit Project



# RWL Language Revision

- A Water Transfer Project
  - Water from a lake (Peck Park), a 303(d) listed water body located in the Los Angeles River Watershed, to a spreading basin in the San Gabriel River Watershed which has greater infiltration capability
  - No explanation of how this will address water quality standards (e.g., metals and bacteria TMDLs)
  - Compliance certainty is in doubt!

# RWL Language Revision

- Can the **EWMP** be a RWL Compliance Alternative?
  - No: the **EWMP** cannot meet the iterative process requirement because compliance is determined by one action: regional multi-benefit controls designed to meet the 85<sup>th</sup> percentile (there is no need for an iteration)
  
  - But something like it can be done under Chapter 27 of Porter-Cologne (Watershed Improvement Management Plan) which allows for multi-benefit projects to address water quality standards:

# RWL Language Revision

## □ Porter Cologne Chapter 27

### ➤ §16101. Watershed improvement plan development and requirements

- *(a) Each county, city, or special district that is a permittee or co-permittee under a national pollutant discharge elimination system (NPDES) permit for municipal separate storm sewer systems may develop, either individually or jointly with one or more permittees or co-permittees, a **watershed improvement plan** that addresses major sources of pollutants in receiving water, stormwater, urban runoff, or other surface runoff pollution within the watershed or sub-watershed to which the plan applies.*

# RWL Language Revision

## □ Porter Cologne Chapter 27 (continued)

### ➤ §16101. Watershed improvement plan development and requirements (continued)

- *The principal purpose of a **watershed improvement plan** is to implement existing and future water quality requirements and regulations by, among other things, where appropriate, identifying opportunities for stormwater detention, infiltration, use of natural treatment systems, water recycling, reuse, and supply augmentation; and providing programs and measures designed to promote, maintain, or achieve compliance with water quality laws and regulations, including water quality standards and other requirements of statewide plans, regional water quality control plans, total maximum daily loads, and NPDES permits.*

# RWL Language Revision

## ❑ Porter Cologne Chapter 27 (continued)

- WIMP carries with it several criteria that must be met:
  - Got to show how the WIMP's regional multi-benefit projects will meet water quality standards
  - A financial mechanism for funding the regional projects must be described
  - Must be discussed in an open and transparent manner
  - It must be proposed to the Regional Board (not vice-versa) and approved by it before it is implemented as the following says:

*Unless a regional board incorporates the provisions of a watershed improvement plan into waste discharge requirements issued to a permittee, the implementation of a watershed improvement plan by a permittee shall not be deemed to be compliance with those waste discharge requirements.*

# RWL Language Revision

- Porter Cologne Chapter 27
  - By the way: because the EWMP in the LA MS4 permit does not conform to the WIMP requirements in Porter-Cologne (in addition to not complying with WQO 99-05) it should be invalidated as a compliance option

## RWL Language Revision

- ❑ Can the **WMP** in the LA MS4 Permit be an Acceptable RWL Compliance Alternative?
  - No because does not comply with WQO 99-05
  - It is program that calls for a plan to develop a plan later – a USEPA concern

# RWL Language Revision

- But You Can Have a WMP
  - By addressing watershed/sub-watershed pollution issues either as a sub-set of stormwater management plan (e.g., addressing metals by providing more projects subject to low impact development requirements through the development planning program
  - Or, by having a group of permittees to develop a WMP for a sub-watershed that contains the 6 core stormwater management programs plus additional watershed-specific BMPs that will be determined by outfall monitoring and modeling

# RWL Language Revision

- ❑ Which Compliance Option Should be Chosen?
  - WIMP, Watershed Management Approach, or the Standard Compliance Approach (SWMP with iterative process)
  - Will depend on outfall monitoring which has not been done in the past
    - Monitoring for compliance and pollution assessment purposes has been done in the receiving water only
    - Outfall monitoring measured against ambient standards is needed determine to what extent a permittee is exceeding a numeric pollution limitation
    - Need 5 years of data before determination can be made
    - Once the assessment is done, permittees can decide which option is best for them based on common pollution problems
    - Also, true TMDLs need to be identified (LA MS4 permit includes TMDLs that are not on the 303(d) list and are non-point TMDLs (cities are point sources))

# RWL Language Revision

- ❑ What Should Statewide RWL Language Include?
  - Implementation of BMPs contained in a stormwater management plan or watershed management plan to the MEP constitutes compliance
  - The iterative process must be clearly defined to enable permittees to avoid RWL violations in the event of exceedances are detected at the outfall and the term “iterative process” should be specifically referenced (9<sup>th</sup> Circuit denied LACFCD the defense that the iterative process allowed numeric pollution exceedances because there is no textual support for its existence in the 2001 permit
  - Allowance of a WIMP, in accordance with Chapter 27 to permit regional multi-benefit projects thereby waving the iterative process and requiring controls outside MS4s

□ Model IP Language (from 2010 Ventura Permit Adopted by LA Regional Board)

*The objective of this Order is to ensure that discharges from the MS4 in Ventura County comply with water quality standards, including protecting the beneficial uses of receiving waters. To meet this objective, the Order requires that Best Management Practices (BMPs) will be implemented to reduce the discharge of pollutants in storm water to the maximum extent practicable (MEP), and achieve water quality objectives and standards. The U.S. EPA envisioned that municipal storm water programs would be implemented in an **iterative** manner and improved with each iteration by using information and experience gained during the previous permit term (Interpretative Policy Memorandum on Reapplication Requirements for MS4 permits - 61 Fed. Reg. 41697).*

# RWL Language Revision

- What to do in the Meantime?
  - LA MS4 permit coerces permittees to opt for either an EWMP or WMP by denying the iterative process for the SWMP option
  - Management plans must be submitted by June of 2014 – they are expensive (several hundreds of thousands or dollars)
  - USEPA opposes the EWMP and WMP because they lack an IP and are plans to develop compliance plans later
  - State Board should suspend the LA permit pending resolution of the RWL issue to spare cities from having to waste taxpayer money on watershed program plans and a permit that are likely to be voided

# RWL Language Revision

- RWL Language in LA MS4 Permit
  - LA RB staff contend the IP is in the RWL of the current permit and was from 2001 LA permit
  - 9<sup>th</sup> Circuit said RWL in the 2001 permit does not contain an IP (no textual support for it)

